Supreme Court, U.S.
FILED
MAR 27 1992
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(2)

CASE NO. 91-1316

SUPREME COURT OF THE UNITED STATES, OCTOBER, 1991 TERM

STATE OF COLORADO, Petitioner

v.

LAWRENCE L. MARCELLUS, Respondent.

MOTION TO PROCEED IN FORMA PAUPERIS

ON BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE COLORADO SUPREME COURT

Lawrence L. Marcellus moves, pursuant to Rule 39, for leave to proceed *in forma pauperis* and without payment of fees or costs in this matter, for the following reasons:

1. Mr. Marcellus is today filing a Brief in Opposition to the Petition for Writ of Certiorari filed by the State of Colorado in this Court.

2. Mr. Marcellus has been represented by court-appointed counsel, the Colorado State Public Defender, since the time of his arrest and throughout his appeal. He has been declared indigent by the courts of the State of Colorado and has proceeded *in forma pauperis* since 1987.

3. Mr. Marcellus has been incarcerated from 1987 through the present and is without funds with which to pay the costs of this proceeding.

4. Mr. Marcellus should not be deprived if his opportunity to respond to the State's petition for writ of certiorari solely due to his indigency. Accordingly, he requests leave to proceed *in forma pauperis*.

Dated this 26th day of March, 1992.

(6)

DAVID F. VELA
Colorado State Public Defender

FRANCES SMYLIE BROWN
Chief Appellate Deputy

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110 Sixteenth Street Suite 800
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ATTORNEYS FOR MR. LAWRENCE L. MARCELLUS

*Counsel of Record

CERTIFICATE OF SERVICE

I , Kathleen A. Lord, hereby certify that a copy of the foregoing Motion to Proceed in Forma Pauperis, along with attached Affidavit in Support of Motion to Proceed In Forma Pauperis, and proposed Order was served on Gale Norton, Colorado Attorney General, by hand delivery to her office at 110 Sixteenth Street, 10th Floor, Denver, Colorado, 80202, on March 26th, 1992.

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AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED IN FORMA PAUPERIS

ON BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI
TO THE COLORADO SUPREME COURT

DAVID F. VELA
COLORADO STATE PUBLIC DEFENDER

FRANCES SMYLIE BROWN
CHIEF APPELLATE DEPUTY

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110 Sixteenth Street Suite 800
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ATTORNEYS FOR LAWRENCE L. MARCELLUS

*Counsel of Record

AFFIDAVIT OF LAWRENCE L. MARCELLUS IN SUPPORT OF MOTION FOR LEAVE TO APPEAL IN FORMA PAUPERIS

I, Lawrence Marcellus, being duly sworn, depose and say that I am the Respondent in the above-entitled case; that in support of my motion to proceed on the Brief in Opposition to the Petition for Writ of Certiorari without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceedings or to give security therefor.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of defending against Petition for Writ of Certiorari and related proceedings are true.

1. Are you presently employed? NO

   a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.

   b. If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received.

   Department of Corrections, Ordway Unit
   Kitchen, $40.00 to $46.00 a month

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source? NO

   a. If the answer is yes, describe each source of income and state the amount received from each during the past twelve months.

3. Do you own any cash or checking or savings account? NO

a. If the answer is yes, state the total value of the items owned.

_____

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and other clothing)? NO

a. If the answer is yes, describe the property and state its approximate value.

_____

5. List the persons who are dependent upon you for support and state your relationship to those persons.

NONE

I understand that a false statement or answer to my questions in this affidavit will subject me to penalties for perjury.

Janice Lee McCulley

Subscribed and sworn to before me this 23rd day of March, 1992.

Merrit E. Mussog

My commission expires on April 10, 1993

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ORDER

Let the applicant proceed without prepayment of costs or fees or the necessity of giving security therefor.

DATED: _____, 1992.

_____

JUSTICE OF THE SUPREME COURT OF THE UNITED STATES